

**Testimony Before Subcommittee on Early
Childhood, Youth and Families,
U. S. House of Representatives**

***SCHOOL SAFETY ISSUES AS RELATES TO
STUDENT DISCIPLINE AND THE
INDIVIDUALS WITH DISABILITIES EDUCATION ACT***

**Burke County High School
Waynesboro, Georgia
August 13, 1999
10:30 a.m.**

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Mr. Chairman and members of this subcommittee, I thank you for this opportunity to speak to these critical, but very difficult issues in providing a free, appropriate public education for all students in our public schools. We, in the Emanuel County School System, strive diligently to provide the best educational opportunity for all students in the least restrictive environment. While the May 1997 Reauthorization of the Individuals with Disabilities Education Act (IDEA) on the “surface” appeared to be less cumbersome and to provide educators with less restrictive options in the discipline of students with disabilities, detailed analysis of the total document reveals language that is very restrictive and extremely complex.

In the Emanuel County Public Schools, teachers and administrators are encouraged to implement strategies for discipline for inappropriate behavior at the lowest practical level and with the least interruption to the student’s education experience.

For students who continue to be disruptive or commit serious offenses of the discipline codes, other discipline options are used. These options include, but are not limited to, the following strategies:

- Development of behavior management plans.
- Referral to a student support team with representatives from various agencies and professions, as appropriate.
- Assign to opportunity room or in-school suspension.
- Assignment to Saturday community service or tutorial class for 5th grade age equivalent and above students.

- Out-of-school suspension – short term (10 days or less).
- Referral to system level student discipline tribunal.
- Alternative school placement. This is a regular school hours program which also provides special education services.
- Criminal acts are reported to the appropriate law enforcement agencies.
- Presently organizing a Student Transition and Recovery (STAR) program. This program provides before and after school military style discipline and keeps the students in regular classes during school hours.
- Long-term suspension or expulsion (more than 10 days). This option is only available through the system discipline tribunal. In most situations, the student is given the option of applying for enrollment in the alternative school program which provides special education services.

Due process is carefully followed in all these strategies. Any long-term suspension or

expulsion carries a right of appeal. Serious discipline situations are reviewed for due process and compliance with policies, state and federal laws, and regulations.

The above strategies work very well resulting in very few students ever reaching the point of being denied an education because of their behavior. Incidents involving weapons on school property or at school events, generally result in long-term suspension or expulsion for one year. In some situations, these students are given the option of applying for enrollment in the alternative school program.

The process works very well until we have to ask if the student is an IDEA or 504 student. The very question implies some kind of special treatment or discrimination against someone, especially when the behavior is not a manifestation of the disability. Students with disabilities are often just as dangerous as students without disabilities.

The reauthorization of IDEA provides that if the behavior is not a manifestation of the disability, the student can be disciplined as any other student. However, language was added that says the student must receive services. The services must enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals in the individual education plan.

The due process required for discipline of IDEA students who may be a serious danger to themselves or others, is very complex. As long as the parent is cooperative, there can usually be a reasonable solution. If the parent is uncooperative, the burden of proof shifts to the system and requires a more than preponderance of the evidence that maintaining a child in the current placement is substantially likely to result in injury to self or others. For violent behavior and weapons offenses, the system personnel need the right to use their judgment under the same due process rights and rights of appeal as any other student, regardless of the manifestation of disability.

Emanuel County Schools in collaboration with other agencies, provide many services to assist students and parents in the students' educational process.

These services include, but are not limited to the following:

- Counseling services at every school site, including the alternative school program.
- Nurse services at all school sites.
- Social work services at the system level.
- School resource officer services.
- Free family counseling services.
- Student assistance program counselors at the school sites.
- Child advocacy center to provide support and counseling in child abuse situations.
- Close cooperation and direct support of the local district attorney's department, police and sheriff's departments, regional drug task force department of juvenile justice. These departments provide assistance conduct of special classes, counseling students on crime-related matters, conduct of school safety checks, etc.
- Interagency staffing for students and parents to minimize redundant services and to collaborate in all areas of service and expertise.
- Multidisciplinary staffings for child abuse victims, perpetrators and families.
- Health check physicals and health counseling at the school sites or referrals as appropriate.
- Emanuel County Youth Enrichment program. This program provides Saturday community service, academic tutorial/make-up classes, and parenting classes.

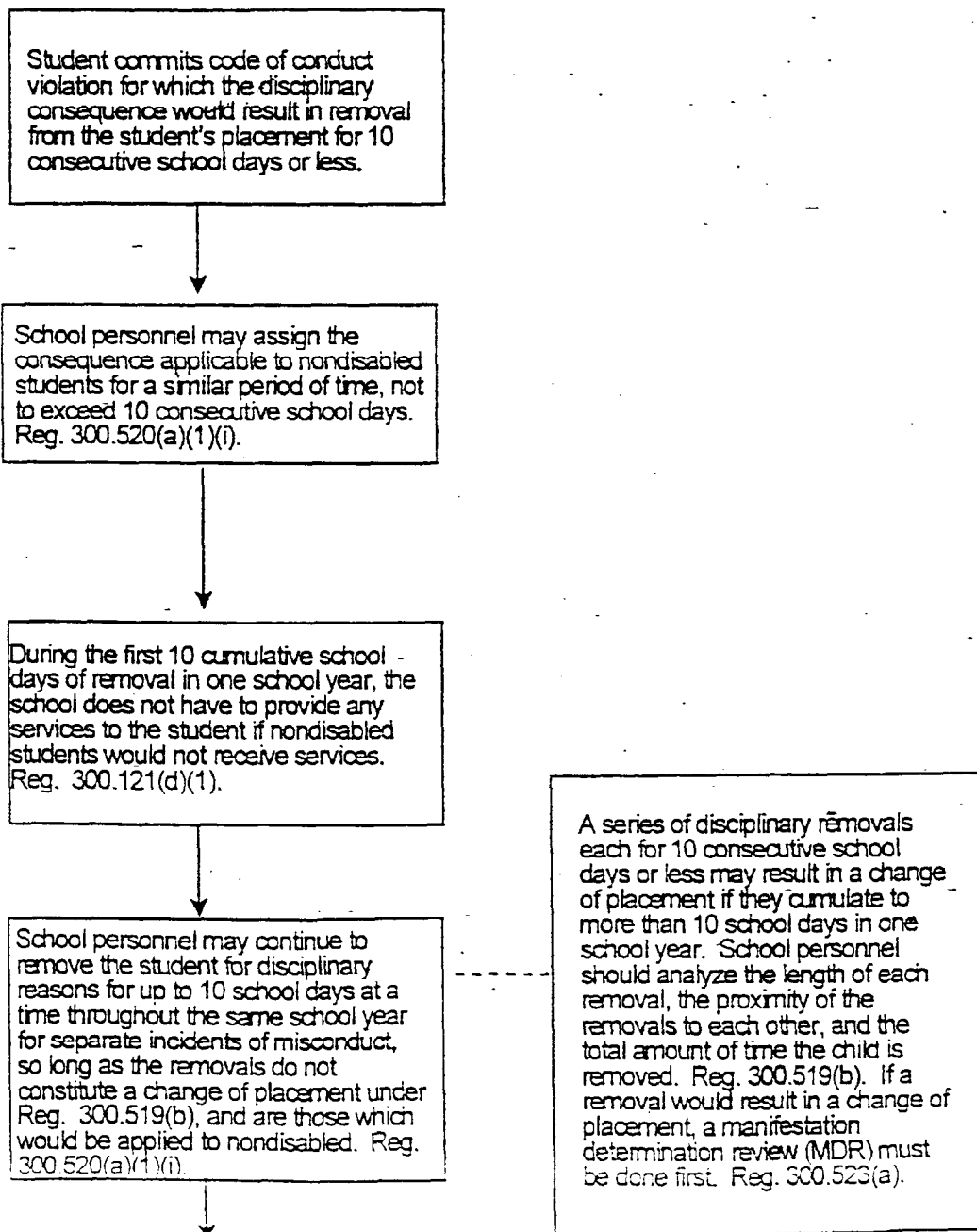
- Special education qualified teacher(s) for the alternative school program.
- Homelessness liaison services for homeless students and families.
- Migrant education specialist services.

Yet to be seen is how the courts will interpret this complex and confusing law and the accompanying regulations. I have enclosed a series of four charts prepared for a school board attorney seminar held May 21, 1999, at Mercer University. This is a major attempt to simplify the new IDEA regulations. It is the best attempt I have seen. (see attachment)

After you have read the charts, imagine yourself in the position of a school site administrator whose job it is to improve the education process, improve test scores, provide a free, appropriate education for all students, and comply with the myriad of laws and regulations impacting education today. Treating violent IDEA/504 students differently from other students, can lead to confusion, indecisiveness, and reluctance to act for fear of being found liable for the action taken, even though acting in good faith.

We, in Emanuel County School System, appreciate your efforts in addressing this critical subject that can greatly impact school safety and academic progress for all students.

**Code of Conduct Violations By Students
with Disabilities Resulting in Disciplinary
Consequences of 10 School Days or Less
(Revised)**



Beginning with the 11th day of disciplinary removals in a school year, educational services must be provided. Reg. 300.520(a)(1)(ii); Reg. 300.121(d)(2)(i)(A). If the removal does not result in a change of placement, school personnel, in consultation with the student's special education teacher, determine the services to be provided. Reg. 300.121(d)(3)(i).

The educational services to be provided must meet the standard of enabling the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals in the IEP. Reg. 300.121(d)(2)(i)(A).

Beginning with the 11th day of disciplinary removals in a school year, the IEP Team must address behavioral issues. If the removal does not result in a change of placement, the IEP Team must meet within 10 business days of first removing the student for more than 10 school days in a school year to develop a plan to conduct a functional behavioral assessment, if one was not conducted before the behavior that resulted in the removal. Reg. 300.520(b)(1)(i).

After the functional behavioral assessment is completed, the IEP Team meets as soon as practicable to develop a behavioral intervention plan to address the behavior and implement the plan. Reg. 300.520(b)(2).

If the student's IEP already includes a behavior intervention plan, within 10 business days of first removing the student for more than 10 school days in a school year, the IEP Team must meet to review the behavior intervention plan and its implementation, and modify the plan and its implementation as necessary to address the behavior. Reg. 300.520(b)(1)(ii).

If the student is assigned subsequent disciplinary removals in a school year for 10 school days or less that do not result in a change of placement, the IEP Team members (including the parent) informally review the behavior intervention plan and its implementation to determine if modifications are necessary. Reg. 300.520(c)(1).

If one or more team members believe modifications are needed, the IEP Team must meet to modify the plan and its implementation to the extent the IEP Team deems necessary. Reg. 300.520(c)(2).

Beginning with the 11th day of disciplinary removals in a school year, educational services must be provided. Reg. 300.520(a)(1)(ii); Reg. 300.121(d)(2)(i)(A). If the removal does not result in a change of placement, school personnel, in consultation with the student's special education teacher, determine the services to be provided. Reg. 300.121(d)(3)(i).

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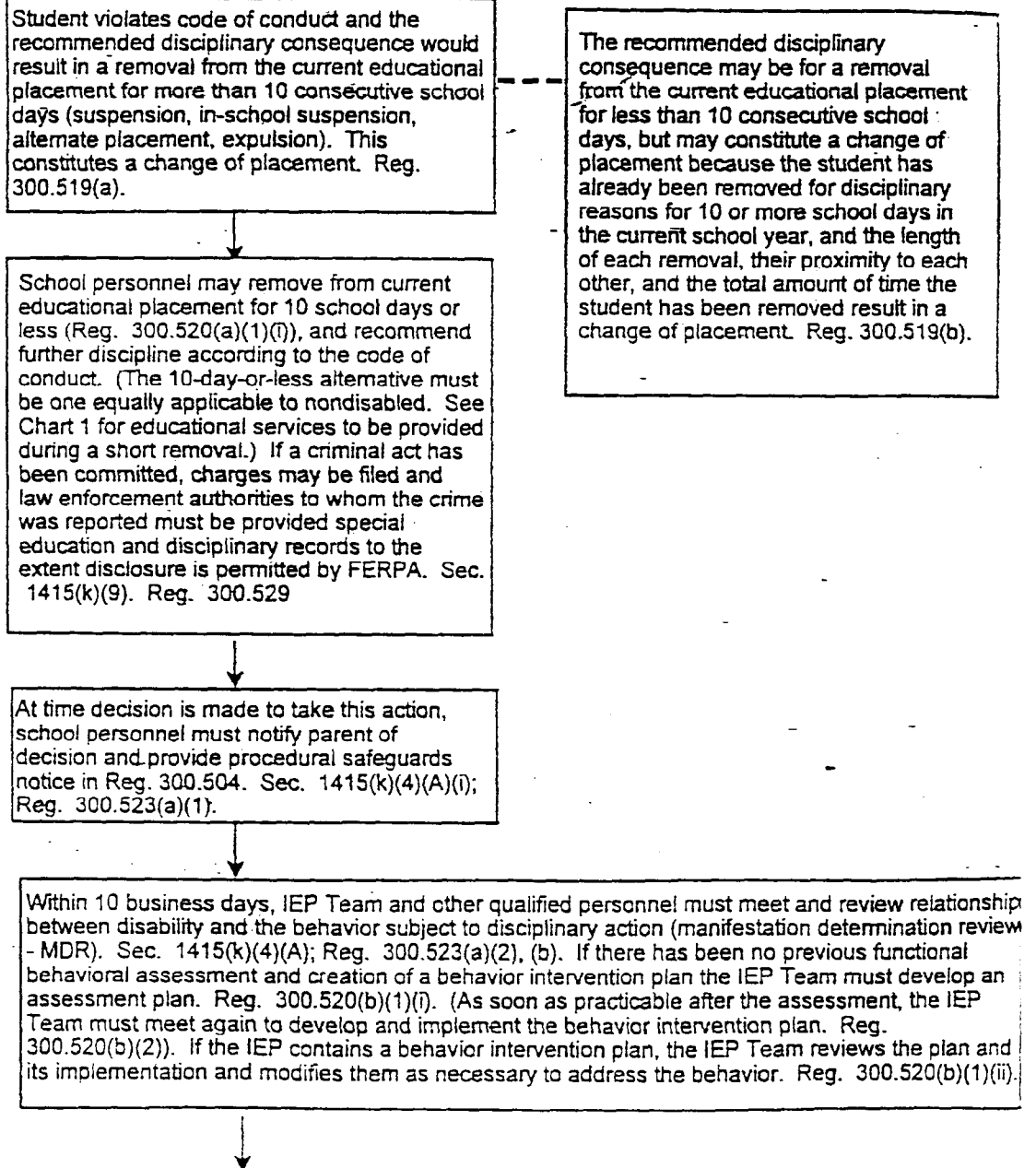
If the student's IEP already includes a behavior intervention plan, within 10 business days of first removing the student for more than 10 school days in a school year, the IEP Team must meet to review the behavior intervention plan and its implementation, and modify the plan and its implementation as necessary to address the behavior. Reg. 300.520(b)(1)(ii).

If the student is assigned subsequent disciplinary removals in a school year for 10 school days or less that do not result in a change of placement, the IEP Team members (including the parent) informally review the behavior intervention plan and its implementation to determine if modifications are necessary. Reg. 300.520(c)(1).

If one or more team members believe modifications are needed, the IEP Team must meet to modify the plan and its implementation to the extent the IEP Team deems necessary. Reg. 300.520(c)(2).

Chart 2

**Code of Conduct Violations By Students With Disabilities for Which Recommended Disciplinary Consequences Would Result in Change of Placement for More Than Ten School Days (Excluding Drug and Weapon Offenses)
(Revised)**



For the MDR, the IEP Team must look at all information relevant to the behavior subject to discipline such as evaluation and diagnostic results, including such results and other relevant information from the parent, observations of the student and the student's IEP and placement. The misbehavior is not a manifestation of the disability if the IEP Team finds that in relationship to the misbehavior subject to discipline.

- the IEP and placement were appropriate;
 - consistent with the content of the student's IEP and placement, special education services, supplementary aids and services and behavior intervention strategies were actually provided;
 - the disability did not impair the ability of the student to understand the impact and consequences of the misbehavior; and
 - the disability did not impair the ability of the student to control the misbehavior.
- Sec. 1415(k)(4)(C); Reg. 300.523(c).



If the IEP Team determines any of the standards were not met, the misbehavior was a manifestation of the disability, and no punishment may be assessed. Reg. 300.523(d). If IEP Team identifies deficiencies in IEP, placement or implementation, it must take immediate steps to remedy. Reg. 300.523(f).

-OR-

If the IEP Team determines the misbehavior was not a manifestation of the disability, regular disciplinary consequences may be applied to the student except that the student must continue to be provided a free appropriate public education. Sec. 1415(K)(5)(A); Sec. 1412(a)(1)(A). Reg. 300.121(a); Reg. 300.524(a). The campus must ensure that special education and disciplinary records are transmitted for consideration by the school district person making the final determination regarding the disciplinary action. Sec. 1415(k)(5)(B); Reg. 300.524(b).

Parent may appeal a finding that the misbehavior was not a manifestation of the disability. The hearing is expedited before a special education hearing officer who applies the same standards as the IEP Team. Sec. 1415(k)(6); Reg. 300.525(a), (b).

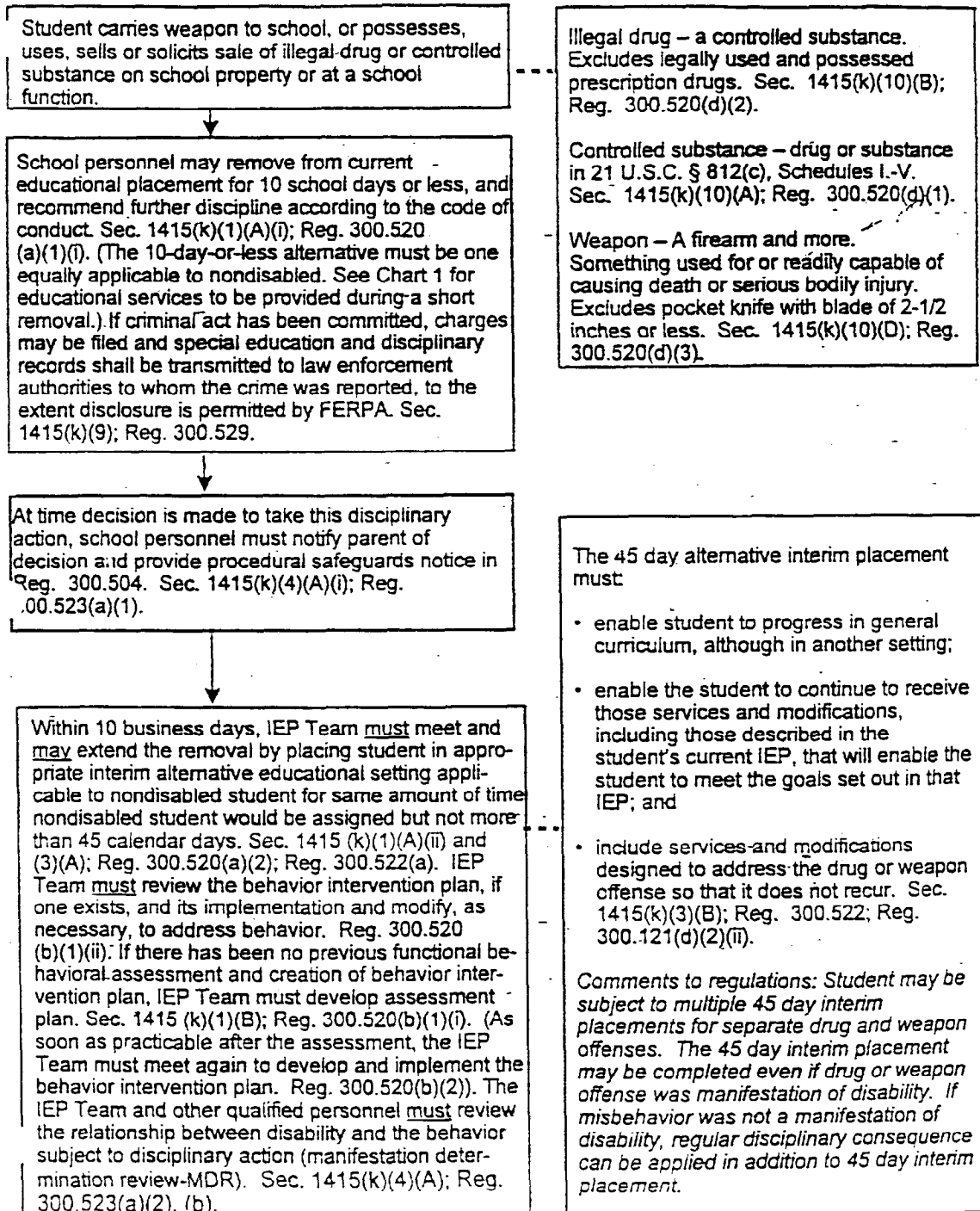
If IEP Team finds no manifestation and changes placement to comply with the disciplinary recommendation, parent may appeal the placement decision. The hearing is expedited before a special education hearing officer. Sec. 1415(k)(6)(A); Reg. 300.525(a)(2).

During appeals, stay put applies. Reg. 300.524(c). If child is substantially likely to injure self or others in the current placement, the school can request an expedited hearing and request the hearing officer to remove to an interim alternative educational placement for up to 45 days. Standards to be met are those in Sec. 1415(k)(2) and Reg. 300.521.



The standard the educational services must meet is that they enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals in the IEP. Reg. 300.121(d)(2)(i)(B); Reg. 300.524(a). The IEP team must determine what services are necessary to meet this standard. Reg. 300.121(d)(3)(ii).

Chart 3
Drug and Weapon Offenses by Students With Disabilities
(Revised)



For the MDR, the IEP Team must look at all information relevant to the behavior subject to discipline such as evaluation and diagnostic results, including such results and other relevant information from the parent, observations of the student and the student's IEP and placement. The misbehavior is not a manifestation of the disability if the IEP Team finds that in relationship to the misbehavior subject to discipline.

- the IEP and placement were appropriate;
 - consistent with the content of the student's IEP and placement, special education services, supplementary aids and services and behavior intervention strategies were actually provided;
 - the disability did not impair the ability of the student to understand the impact and consequences of the misbehavior; and
 - the disability did not impair the ability of the student to control the misbehavior.
- Sec. 1415(k)(4)(C); Reg. 300.523(c).

If the IEP Team determines any of the standards were not met, the misbehavior was a manifestation of the disability, and no punishment may be assessed. Reg. 300.523(d). If IEP Team identified deficiencies in IEP, placement, or implementation, it must take immediate steps to remedy. Reg. 300.523(f).

-or-

If the IEP Team determines the misbehavior was not a manifestation of the disability, regular disciplinary consequences may be applied to the student except that the student must continue to be provided a free appropriate public education. Sec. 1415(k)(5)(A); Sec. 1412(a)(1)(A). Reg. 300.121(a); Reg. 300.524(a). The campus must ensure that special education and disciplinary records are transmitted for consideration by the school district person making the final determination regarding the disciplinary action. Sec. 1415(k)(5)(B); Reg. 300.524(b).

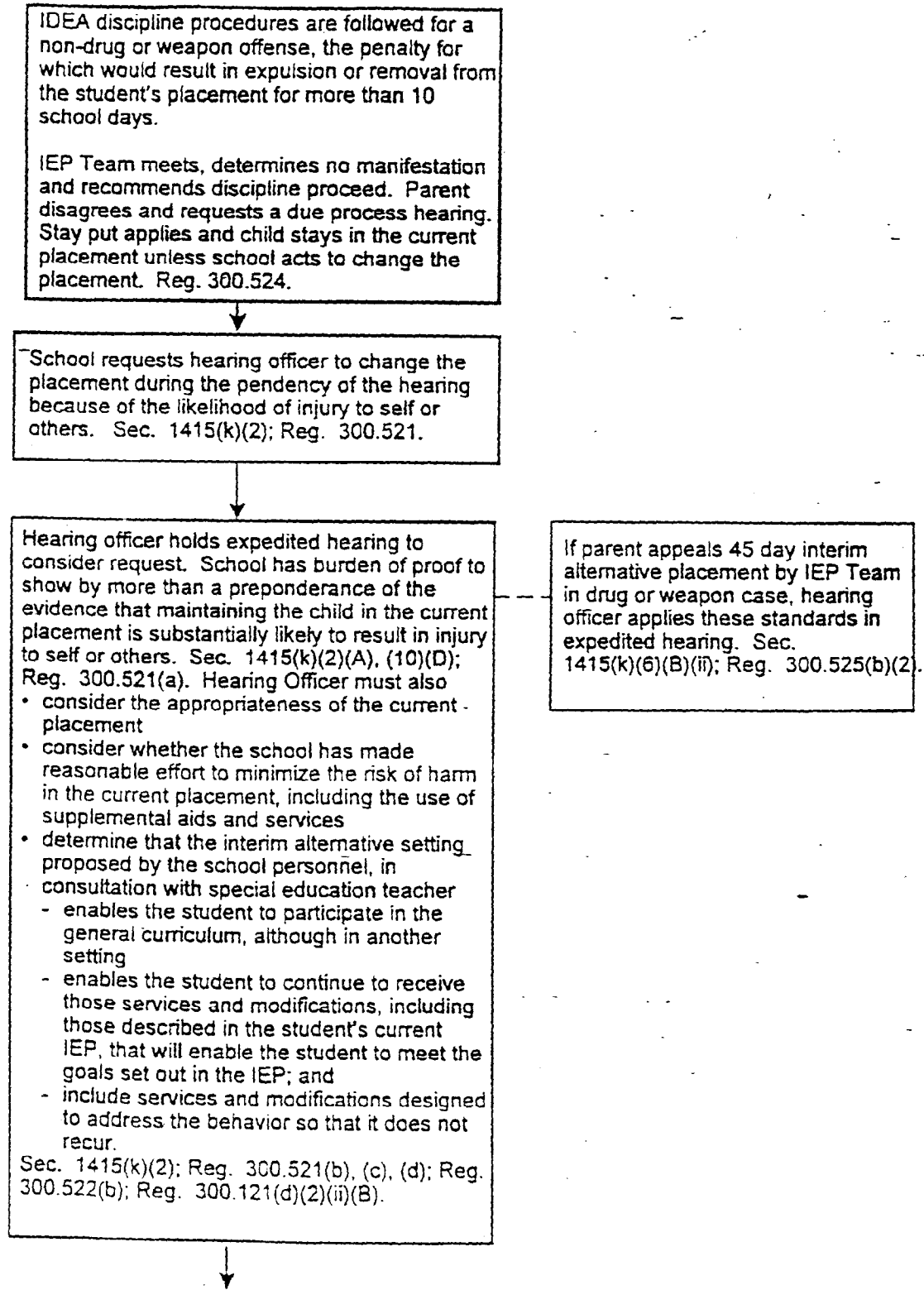
Parent may appeal a finding that the misbehavior was not a manifestation of the disability. The hearing is expedited before a special education hearing officer who applies the same standards as the IEP Team. Sec. 1415(k)(6); Reg. 300.525(a), (b).

Parent may appeal decision to place student in 45 day interim placement. The hearing is expedited before a special education hearing officer who applies the standards regarding a dangerous student in Reg. 300.521. Sec. 1415(k)(6)(B)(ii); Reg. 300.525(b)(2).


When a parent requests a hearing in a drug or weapon case to challenge the interim alternative placement or the manifestation determination, student remains in interim placement until decision of hearing officer or 45 days expires, whichever comes first unless the parent and school agree otherwise. Reg. 300.526(a). Then student returns to current placement (defined as placement prior to interim alternative educational setting). School can ask for expedited hearing before special education hearing officer to prevent this return if the student is substantially likely to injure self or others. Reg. 300.526(b), (c). The hearing officer applies the standards in Reg. 300.121. Reg. 300.526(c). Hearing officer can order another placement for up to 45 days. Reg. 300.526(c)(3). This procedure may be repeated as necessary. Sec. 1415(k)(7); Reg. 300.526(c)(4).

The standard the educational services must meet is that they enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals in the IEP. Reg. 300.121(d)(2)(i)(B); Reg. 300.524(a). The IEP team must determine what services are necessary to meet this standard. Reg. 300.121(d)(3)(ii).

Chart 4
Students Dangerous to Self or Others
(Revised)



If all requirements are met, hearing officer may order a change of placement to the interim alternative educational setting for up to 45 days. Sec. 1415(k)(2); Reg. 300.521.



Student returns to his or her current placement (the placement prior to the interim alternative educational setting) at end of 45 days if no decision has been issued by hearing officer in pending due process hearing. If school believes it would be dangerous for student to return to current placement while hearing is still pending, school may request another expedited hearing to again place student in 45 day interim placement while hearing continues to be pending. Reg. 300.526(b), (c)(4). Hearing officer holds same type of hearing initially held when hearing officer ordered first 45 day interim placement. Sec. 1415(k)(7); Reg. 300.526. Any subsequent 45 day interim setting must meet the standards in Reg. 300.522.